(30,301)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 991

AMERICAN RAILWAY EXPRESS COMPANY, PETITIONER,

vs.

GEORGE C. DANIEL

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 5, 1924

[fol. 1] **SUPREME COURT OF GEORGIA**

AMERICAN RY. EXPRESS CO.

versus

G. C. DANIEL

[fol. 2] PETITION FOR WRIT OF CERTIORARI WITH NOTICE AND PROOF OF SERVICE—Filed March 23, 1923

To the Supreme Court of Georgia:

The petition of the American Railway Express Company respectfully shows:

1

That there came on for determination at the October Term, 1922, of the Court of Appeals of Georgia, a case numbered 13603, in which your petitioner, the American Railway Express Company was the plaintiff in error, and one George C. Daniel was defendant in error, being a writ of error from Madison Superior Court, and the decision of the Court of Appeals therein was adverse to your petitioner.

2

This petitioner is dissatisfied with the decision and judgment of the Court of Appeals and the issues in said cause involve matters of gravity and importance, and this petition is for the purpose of obtaining the writ of certiorari from the Supreme Court of Georgia in the cause aforesaid.

As an exhibit to this petition, petitioner furnishes herewith a certified copy of the entire record of the case in the Court of Appeals, including a copy of the judgment and of the opinion of the Court of Appeals.

3

Petitioner now proceeds to set forth a succinct abstract and statement of the matters involved and to specify plainly the decision complained of and the alleged errors committed:

Your petitioner is a common carrier of express doing both an intrastate and interstate business. On August 25th, 1920, it received for transportation in interstate commerce from one Mrs. J. S. Daniel, at Comer, Georgia, a package consigned to her son (the plaintiff) at Baltimore, Maryland. The shipment was lost in transit. [fol. 3] At the time it was delivered to your petitioner, as a common carrier thereof, it issued its written receipt therefor in which the value of the package was stated to be $50.00. This receipt was delivered to and accepted by the shippers' agent who made, and was authorized to make, the shipment for her, and it became the contract between the parties hereto. The undisputed evidence showed that

the carrier maintained alternate rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property. It also offered in evidence a certified copy of its tariffs and classifications of file with the Interstate Commerce Commission, in which were contained its schedule of rates, fares and charges, but this piece of documentary evidence was not admitted by the trial Court who on his own motion ruled it out as immaterial.

The plaintiff proved that the actual value of the property was $100.00 and a verdict was rendered in his favor for this amount. Your petitioner admitted the loss of the package and its liability therefor, but insisted that the plaintiff was, under the facts and the controlling Federal law, estopped to recover more than the written declared value at time of shipment. It, therefore, admitted liability to the extent of $50.00.

4

In its decision sustaining the trial judge, the Court of Appeals has, we respectfully submit, applied the Georgia rule of liability as to an intrastate shipment as exemplified in Bailey vs. American Railway Express Company, — Georgia, — (113 S. E. 551), and has failed to apply the Federal rule of liability as laid down by the United States Supreme Court in cases which begin with the Croninger case (226 U. S. 491) and culminate in the case of American Railway Express [fol. 4] Company vs. Lindenburg, 43 Sup. Ct. Rep. 206. While recognizing the fact that interstate shipments are governed by the Federal law, the Court of Appeals gives to the Cummins Amendment, the statute applicable to the rights and liabilities of the parties to this shipment, a construction different from that which has been given it by the United States Supreme Court, and the rule of law announced by the Court of Appeals as governing the rights and liabilities of the parties to an interstate shipment is the rule applied by the Georgia Supreme Court to an intra-state shipment in Georgia. We need hardly add that the two rules of law conflict.

5

The question decided by the Court of Appeals and now presented to this Court for a review may be stated thus:

In the case of an interstate shipment, where the carrier maintains alternate rates dependent upon the value declared in writing by the shipper, or agreed upon in writing as the released value of the property, and the receipt issued by the carrier, and accepted by the shipper or his agent, (though signed by neither) contains a statement or declaration that the property is of the value of $50.00 and the carrier applies a rate thereto corresponding to the value so declared, is the shipper, in case of loss estopped to recover more than the value so declared, or will the carrier, in maintaining its limited liability defense, have to show that the $50.00 value so declared was the result of an agreement knowingly and understandingly made for the purpose of securing the lower rate of transportation?

The Court of Appeals in its opinion handed down in the case subjudice, held that the recital or declaration of value contained in the receipt given under the circumstances narrated herein was not, with-
[fol. 5] out more, sufficient to constitute an agreement knowingly and understandingly made for the purpose of securing a reduced rate of transportation. This is true, it is said, because it was never brought home to the shipper at the time of making the declaration of value that by doing this he was securing the benefit of a lower alternate rate, and that it is necessary, in order to bind the shipper that he should, in making the declaration, have known and understood that in so doing he was availing himself of a reduced rate corresponding to the value thus declared. Recovery for full actual loss was therefore allowed.

It is this decision of the Court of Appeals which your petitioner specifies as being error and your petitioner alleges it is error because it manifestly disregards the binding United States Supreme Court cases holding directly to the contrary. It fails to consider that doctrine announced so many times by the United States Supreme Court and which finds its latest expression in the Lindenburg case (supra) that " the shipper is conclusively presumed to know the rates."

6.

In the body of the opinion *of* the Court of Appeals says:

"A value arbitrarily placed by the carrier upon the property presented for transportation, even though the reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage."

It is most respectfully submitted to this Court that this is in direct conflict with the law of the Federal Courts and the United States
[fol. 6] Supreme Court. It is in direct conflict with the very language of the Second Cummins Amendment (Aug. 9, 1916) and applies the State rule of carrier liability to an interstate carriage. It considers the arbitrary valuation doctrine as being applicable in determining a carriers' liability on the loss of an interstate shipment. Consider also the language which follows the quotation above made. Here is an elaboration of the rule announced in the headnote of the opinion and which we drew to the attention of this Court in paragraph 5 hereof, but at the same time the doctrine of "arbitrary or bona fide valuation" is again brought forward and this State doctrine is made to govern the rights and liabilities of the parties to this interstate shipment.

Petitioner insists that the points raised in this certiorari are well within the rules laid down in the case of Central of Georgia Ry. Co. v. Yesbik, 146 Ga. 620, in that there is here involved a question of gravity and importance, for the rights and liabilities of a carrier

of an interstate shipment are of sufficient magnitude to warrant a determination by this Court. It is very respectfully submitted that to allow this decision of the Court of Appeals to stand is to permit the Federal rule applicable to become beclouded and will result in decisions, which, following the case at bar, will do violence to the rights of the carrier of interstate shipments. It is urged that "the writ of certiorari should be granted, that the whole question may be maturely considered and decided on full argument."

A brief for petitioner in certiorari is submitted herewith.

Due notice of the intention to file this petition for certiorari has been given to the Clerk of the Court of Appeals as will appear from [fol. 7] the transcript of the record accompanying this petition.

The costs required by the rules of this Court have been paid, and notice of the date of the filing of this petition, together with a copy of the petition and of the brief will be served on counsel for respondent in accordance with the rule.

Wherefore, petitioner prays that the writ of certiorari be granted by this court in order that the errors complained of may be considered and corrected, it being insisted by your petitioners that each and all of the rulings of the Court of Appeals mentioned above are erroneous.

Alston, Alston, Foster & Moise, Clarence E. Adams, Attorneys for Petitioner.

P. O. Address: Alston, Alston, Foster & Moise, Atlanta, Ga.; Clarence E. Adams, Danielsville, Ga.

[File endorsement omitted.]

[fol. 8] [Title omitted]

PROOF OF SERVICE—Filed March 28, 1923

Due and legal service of copy of the petition for certiorari and copy of the brief of petitioner for certiorari acknowledged; notice of the date of filing of said petition for certiorari also acknowledged. All other and further notice and service waived this 26 day of March, 1923.

Berry T. Moseley, Attorney for George C. Daniel, Defendant in Certiorari.

[File endorsement omitted.]

[fol. 9] [Title omitted]

NOTICE—Filed March 6, 1923

To the Honorable Logan Bleckley, Clerk of the Court of Appeals of Georgia:

Notice is hereby given you, within ten days after filing of the judgment in the above stated case, that it is the intention of the plaintiff in error, the American Railway Express Company, to apply to the Supreme Court for a writ of certiorari in said case. This notice is given pursuant to the statute and rules of court in such cases made and provided.

This 6th day of March, 1923.

Alston, Alston, Foster & Moise, Attorneys for American Railway Express Company, Plaintiff in Error.

[File endorsement omitted.]

[fol. 10] IN SUPERIOR COURT OF MADISON COUNTY

BILL OF EXCEPTIONS—Filed April 29, 1922

Be it remembered that on the 25th day of July, 1921, at the regular July term of the Superior Court of Madison County, before the Honorable Walter L. Hodges, Judge, presiding, there came on to be tried the case of Geo. C. Daniel, against the American Railway Express Company, Inc., the same being a suit for breach of contract. Said suit was filed on the 15th day of February, 1921, and at the regular March term, 1921, defendant filed answer to said suit.

Said case proceeded to trial at the regular July Term, 1921 of said court, on the date above stated, a jury was stricken, evidence was introduced for the plaintiff and defendant, and after argument of counsel and charge of the court, the jury rendered a verdict in favor of the plaintiff in the sum of one hundred dollars, and judgment was duly entered thereon, all this appearing in the record.

The defendant thereafter in regular course and within the time prescribed by law filed its motion for new trial, with the evidence duly approved by the court, and the charge of the court properly certified. Said motion came on for a hearing on the 4th day of April by agreement and order, 1922, and the recitals of facts in the several grounds of the motion were approved, and the said motion was by court overruled on each and all of the grounds therein stated.

To this judgment of the court the defendant excepts and now excepts and assigns error thereon, and says that the court erred in overruling said motion for new trial on each and all of the grounds therein stated in both the original motion and the amended grounds filed thereto.

The defendant specifies the following portions of the record in said case as material to a clear understanding of the errors in this bill of exceptions, to-wit:

1. The original petition in said case, filed on the 15th day of Feb. 1921.

[fol. 11] 2. The original plea and answer of defendant filed on the 7th day of March, 1921.

3. The motion for new trial filed by defendant on the 26th day of July, 1921.

4. The amended grounds for new trial filed on the 9th day of March, 1921.

5. The brief of evidence, with the order and entries thereon filed on the 9th day of March, 1922.

6. The charge of the court with the approval of the Judge thereon dated the 9th day of March, 1922, and filed on the 9th day of March, 1922.

7. The verdict of the jury in said case, rendered on the 25th day of July, 1921.

8. The judgment of the court on said verdict, dated the 25th day of July, 1921.

9. The judgment of the court certifying the grounds and the amended motion dated the 9th day of March, 1922, and the order of the court finally overruling the motion for new trial dated on the 4th day of April, 1922.

10. The entries of filing of each and all of the record or parts thereof, above specified to be entered and transmitted in the proper order.

And now within the time provided by law, and within thirty days of the entry of the judgment overruling said motion for new trial comes the defendant and tenders this his bill of exceptions and prays that the same may be certified as provided by law in order that the errors complained of may be considered and corrected by the Court of Appeals of Georgia.

Robert C. Alston, P. O. Address Atlanta, Ga.; Clarence E. Adams. P. O. Address Danielsville, Ga., Attorneys for Plaintiff in Error.

[fol. 12] GEORGIA,
Madison County:

JUDGE'S CERTIFICATE

I do certify that the foregoing bill of Exceptions is true, and specifies all of the evidence and all of the record material to a clear under-

standing of the errors complained of; and the Clerk of the Superior Court of Madison County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the Court of Appeals, that the errors alleged to have been committed may be considered and corrected.

This 28th day of April, 1922.

W. L. Hodges, J. S. C., Northern Circuit.

Clerk's Office, Superior Court of Madison County, Ga., April 29, 1922

CLERK'S CERTIFICATE

I hereby certify that the foregoing is the true Original Bill of Exceptions, filed in this office, in the case therein stated, and that a copy thereof has been made and is now on file in this office.

Witness my signature and the seal of said Court hereto affixed, the day and year last above written.

Wm. D. Meadow, Clerk.

[File endorsement omitted.]

[fol. 13] Due and legal service of the within Bill of Exceptions and Writ of Error acknowledged; copy and all other and further notice and service waived.

This April 29th, 1922.

Berry T. Mosely, Attorney for G. C. Daniel, Dft. in Error.

MADISON SUPERIOR COURT

[Title omitted]

PETITION

To the Superior Court of said County:

The petition of George C. Daniel, citizen of said State shows the following facts:

1

That the American Railway Express Company, Inc. is a corporation, and has an agent and a place of business and is doing business in said County of Madison said State.

2

That said defendant Company is indebted to your petitioner in the sum of One Hundred and Fifty Two & 50/100 ($152.50) principal with interest on the same from August 25th, 1920 at 7% per annum for the reasons hereinafter set out.

3

[fol. 14] That Mrs. J. S. Daniel, petitioner's mother, delivered to the said defendant American Railway Express Company, at its office at Comer, Ga., in said County, for petitioner a package for shipment to petitioner at Baltimore, Maryland, and to be transported by said Company, consisting of the following articles, and of the value set opposite each article:

One suit of clothes	of the value of	$40.00
One overcoat	" " " "	40.00
One raincoat	" " " "	15.00
One cap	" " " "	2.00
7 Suits of Underwear	" " " "	21.00
One pair shoes	" " " "	3.50
2 pair socks	" " " "	2.50
1 Wool Sweater	" " " "	4.00
1 Silk Muffler	" " " "	5.00
4 Wool Shirts	" " " "	16.00
Total amount due		$152.00

4

That while said articles were in the possession and control of defendant, they were lost by said Company, and the same have never been delivered to petitioner, although demand for delivery of the same has been made of said defendant company and delivery refused.

5

That is was no fault of said petitioner that said articles herein enumerated were lost by said company, and that said company was negligent in losing the same, and in not delivering said articles as they agreed to do when demanded.

6

That said company has admitted its inability to deliver said articles delivered to it for transportation from Comer, Georgia, to Baltimore, Maryland, and thereby has injured and damaged your [fol. 15] petitioner said amounts. That the articles herein enumerated was the property of petitioner at the time of said delivery to said defendant and the time same was lost by defendant and the same was to be delivered to petitioner at Baltimore, Maryland, where petitioners at that time resided.

7

That he is now a resident of Madison County, Ga.

That payment for said articles has been demanded of said defendant and payment of the same has been refused.

Wherefore petitioner prays that process do issue directed to the defendant American Railway Express Company, Inc., requiring it to be and appear at the next term of this court, to be holden on the first Monday in March, 1921 to answer your petitioner's complaint.

Berry T. Moseley, Petitioner's Attorney.

STATE OF GEORGIA,
Madison County:

[Title omitted]

Complaint. Suit on Act

SUMMONS AND SHERIFF'S RETURN—Filed February 15, 1921

To the sheriff of said county and his lawful deputies, Greeting:

The Defendant American Railway Express Company, Inc., is hereby required personally or by attorney, to be and appear at the Superior Court, to be held in and for said County on the First Monday in March next, then and there to answer the Plaintiff's demand in an action of complaint, as in default thereof the Court will proceed as to justice shall appertain.

Witness the Honorable W. L. Hodges, Judge of said Court, this 15 day of Feby., 1921.

Wm. D. Meadow, Clerk.

[File endorsement omitted.]

[fol. 16] GEORGIA,
Madison County:

I have this day served the defendant C. H. Barns, Agent with a copy of the within process, petition, and order in person.

This 16th day of Feb., 1921.

W. H. Hall, Sheriff.

IN SUPERIOR COURT OF MADISON COUNTY

[Title omitted]

ANSWER—Filed March 7, 1921

And now comes the defendant, and for plea and answer states the following facts, to wit:

1

Paragraph one of plaintiff's petition is admitted.

2

Paragraph 2 of the petition is denied, except this defendant admits its liability to the extent of $50.00—liability for loss being limited to $50.00 by reason of the special rate charged and specified in the contract of shipment, copy of which is hereto attached and made a part hereof.

3

Answering paragraph three, defendant admits that a package was delivered to its agents by Mrs. J. S. Daniel, but as to what said package contained defendant can neither admit nor deny for the want of sufficient information, defendant's liability in any event being limited to $50.00 as above stated.

4

The allegations of paragraph four are admitted, except this defendant is ready and willing to pay the amount due under said contract, to wit the sum of fifty dollars, and has tendered and now tenders said amount to plaintiff.

[fol. 17]

5

In answer to the fifth and sixth paragraph- of the petition, defendant admits that the package was never delivered to the consignee, but denies that its liability exceeds the sum of fifty dollars.

6

Paragraph seven is admitted.

7

Paragraph eight is admitted, except this defendant admits its liability in the sum of fifty dollars which it stands ready to pay to plaintiff.

Clarence E. Adams, Atty. for Defendant.

[File endorsement omitted.]

[fol. 18] MADISON SUPERIOR COURT

Before Hon. W. L. Hodges, Judge of the Superior Court of the Northern Circuit

[Title omitted]

BRIEF OF EVIDENCE

Appearances: Judge B. T. Moseley for the Plaintiff; C. E. Adams, Esq., for the Defendant.

Mrs. J. S. DANIEL, a witness for the plaintiff, being duly sworn, testified as follows:

Direct examination by Judge Moseley:

My name is Mrs. J. S. Daniel, and George C. Daniel, is my son. In August, 1920, he was living in Baltimore, Maryland, but in February, 1921, he resided in Danielsville. About August 25, 1920, I delivered or had delivered to the American Railway Express Company a package addressed to George C. Daniel at Baltimore, Maryland.

There was a suit of clothes in the package, I don't know what the suit cost but I think it was worth $50.00. I tried to be conscientious in making out the list, I don't want more out of the Express Company than I can conscientiously ask. There was an overcoat worth $40.00. It was a dress suit overcoat, and that is what it was worth at the time I delivered it to the Express Company. There was a cap which was worth $2 and seven suits of underwear which was worth $21.00 and more, and a pair of shoes for $3.50. They were worth that because they were brand new shoes, and there was a wool sweater worth $4 and a silk muffler worth $5 and four wool shirts amounting to $16. All of this makes a total of $152.50. I made arrangements with Mr. Fowler, the mail man, and he carried them to Comer to the express office there. When I gave them to Mr. Fowler I had no idea of them being lost, I said, Here is an express package I want to ship to my son in Baltimore, please deliver them to Mr. Barnes and tell him to send me the amount of the express, [fol. 19] and I want them insured, and send me the amount and I will settle with you for carrying them, and he said, About how much, and I said I hardly know, but they are right around $200, so Mr. Fowler, as well as I remember, carried them off on the morning mail. The next day sometime Mr. Fowler come back and I asked him what I owed him and the Express Company for the insurance and also for the express. I was paying the express to Baltimore, and he said $1.00, and I thought that was pretty small and I said, that is too small, and said, Mr. Barnes told me that he insured that package for Fifty Dollars, and I said, Why Mr. Fowler, one suit of clothes is worth that, but I had no idea of it being lost. I did not agree with the Agent of the Express Company at

Comer, or with Mr. Fowler, the man who carried them, to insure them at that value.

Counsel for defendant stated: I object to this testimony because what we are concerned in is what the agent told the Express Company, and what the witness told Mr. Fowler would not be binding on us and is not admissible and I object to the testimony unless she can show that he exceeded the scope of his authority.

The Court: I will allow her to testify as to what she authorized him to do.

I told Mr. Fowler that there was a package of clothing that I wanted shipped to my son in Baltimore, and I said you tell Mr. Barnes to send me the amount, I want it insured and send me the amount of the insurance, and I will send him the money, and I will settle for your trouble, and he said how much, and I said I don't know, right around two hundred dollars. The reason I did not say the amount, I had been informed that the Express people wouldn't insure a package for its full value and I was leaving it to Mr Barnes, I said tell him to put a fair valuation." Mr. Fowler [fol. 20] will remember me saying that, I don't know what he told Mr. Barnes, but he will remember me saying that. I did not authorize Mr. Fowler to place a valuation of $50 on that package.

No cross-examination.
Plaintiff rests.

C. H. Barnes, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I am agent of the American Railway Express Company at Comer. I know about the package that Mrs. Daniel has sued for. Mr. Fowler, the mail man delivered this package to me, but he has no connection with the American Railway Express Company. Mr. Fowler brought a package and said I have a package here, and I said, What is it, and he said, It is a package and I looked at it and it was addressed to Baltimore, and I got my receipt to make it out and I said, "What is the value, and he said, She didn't say, and I don't know just what, and I said Will $50 cover it, and he said, I don't know, he said, I guess so. I made out the receipt I told him whatever you say I will put the valuation. He didn't make any response. I said, Will $50 cover it and he said, I guess so. I didn't know what was in the package, he just said there was some clothing in it, and I didn't know the value of the clothing. I didn't have any interest in placing it at $50. Above $50 there is an additional cost, and I said If it is more I can put it at whatever you say and if he had said $500, I would have done that. The reason I put it at $50 was because there was no additional cost over $50 to the shipper. The reason that I issued this receipt for $50 was because

he said he guessed $50 would cover it, he never made any stipulated price.

If that package had been worth $75 there would have been more express, but if it had been $200 it wouldn't have been four times [fol. 21] above $50, it would be ten cents in addition. It was nothing to me, if he had said $500 I would have cut it down, I just asked him if that would cover it, I ask folks what packages are worth to find out, and my question in this case was to find out the value. I issued a receipt. In regard to that being the original receipt, that is my signature. When I issued this receipt I turned it over to Mr. Fowler. It was not returned to me before filing a claim. In regard to hearing no more about this shipment until the goods were lost, they asked me to trace it and I tried to trace it. That is a copy of the original, there are four copies that I make, and the top copy is the one you tear off and give to him. This is not the one I gave to him. I have carbons. I make four copies at the same stroke of the pen. This is not one of the copies that I made at the time.

Cross-examination by Judge Moseley:

This is not the original receipt, this was not made at the same time the original was made, when she asked me for a copy of the receipt, the original was given to Mr. Fowler. When I asked Mr. Fowler the value of this package he told me that Mrs. Daniel didn't give him any value. Mr. Fowler didn't put a stipulated amount on it, and I asked him if $50 would cover it and he said he guessed so, he didn't say that it would. I put that $50 in the receipt under the conversation between me and Mr. Fowler. No stipulated amount was given to me at all. In regard to him making no reply when I asked him to value it, he said that he didn't know, he said it had some clothing in it.

Redirect examination by Mr. Adams:

This receipt is a duplicate this is a copy, it is not the original receipt. I give this one as a copy. I don't know where this come from it is not my handwriting. That come from the office. I got [fol. 22] that from the record. There is one that goes to the package, the top copy goes to the shipper and the other to my office files and I made this from the office files, the original was given to Mr. Fowler. This (indicating) is a correct copy.

NEAL COMPTON, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I remember the time that Mr. Fowler delivered a package to the express company at Comer for Mrs. Daniel. I was present. Mr.

Fowler brought the package in and he told Mr. Barnes where he wanted to send it, and he hold me to weigh it and I weighed it and brought it back, and Mr. Barnes started to make his receipt, and he said, What is the value, and Mr. Fowler said, I don't know, I think I asked him what was in it, and he said some clothes, and Mr. Bond asked him would $50 do, and he said, he guessed so,, and Mr. Bond said I will value it at anything you say, and Mr. Fowler said $50 will do, I reckon

Cross-examination by Judge Moseley:

I said that Mr. Fowler said he didn't know what it was worth and said that she didn't say. The $50 was a suggestion of Mr. Barnes and not Mr. Fowler's.

Gus Fowler, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I delivered a package to Mr. Barnes, at Comer. I don't remember exactly what happened at the time, I delivered that package, Mrs. Daniel sent a box by me one evening, and I asked her [Mrs. Daniels] what was the value of it and she said I haven't got my list made out of the clothes, and I said How about $50 or $75 or something like that, and she said, I guess so I understood her to say that, and when I got to Comer I told Mr. Barnes the same thing [fol. 23] I understood, I don't remember exactly what Mr. Barnes said to me when I delivered the package to him. He asked me what it was worth, and I told him about the same thing, $50 or $75, or $100. I don't remember exactly how it was now, In regard to agreeing for it to be fixed at $50, I was in a hurry and I left it that way, but I accepted the receipt and give it to Mrs. Daniels, and I never heard anything more about it until the package was lost.

Cross-examination by Judge Moseley:

I don't remember whether it was the next day or not that I give her the receipt. In regard to losing it, I don't remember about that, I either left it in my pockets or lost it, I didn't give her the first receipt, she asked me for it. I don't remember when I come back that she told me she wanted it insured. In regard to her telling me she wanted it insured for, and that it was worth $200, I understood her to say that she didn't have her list made out. I don't remember whether I told her that Mr. Bond insured it for $50 or not, I had lost the receipt when she first called for it and I said I don't see it in my pocket and I will look it up, and I went back and told Mr. Bond and he said I will give you the first receipt, he said I will give you the original. In regard to Mrs. Danield telling me that there was one suit of clothes in there worth $50, I don't remember whether she told me what was in there. This was somewhere about February a

year ago. In regard to me not authorizing Mr. Barnes to put a fifty dollar valuation on this package. I told him like Mrs. Daniel told me.

Redirect examination by Mr. Adams:

I lost the receipt, or left it lying out on the desk, and it got lost, and I didn't find it, and I got a copy from Mr. Barnes, and I gave the copy to Mrs. Daniel.

[fol. 24] Mr. Adams: I tender in evidence this schedule of rates filed by the Common Carrier in this case with the Interstate Commerce Commission. The Supreme Court decisions are that these schedules filed with the Interstate Commerce Commission are binding upon all parties. It is the rate they are allowed to charge, when they file it with the Commission, then all parties are bound by it. It is necessary to show that this schedule of rates is filed with the Interstate Commerce Commission, in order that it may be shown that shippers are bound by these rates.

The Court: I do not see how that would illustrate anything. It is a question of liability, whether or not the company is liable for a valuation beyond the insured value of fifty dollars. That particular thing is not in issue, and the schedule is not admitted.

Gus Fowler, recalled, testified as follows:

Direct examination by Mr. Adams:

The receipt that Mr. Barnes gave me at the time that I delivered this package to him, I either left it lying on the desk or lost it, I don't reckon I gave it to anybody, I never did find it, I must have lost it.

The Court: I will allow you to put in the duplicate.

Cross-examination by Judge Moseley:

I got a duplicate and I did not lose that. Mrs. Daniel called for the receipt. I felt in my pocket, and did not have it, and I went to Mr. Barnes first.

C. H. Barnes, recalled, testified as follows:

Direct examination by Mr. Adams:

When Mr. Fowler came back and called for the receipt, I ssued a copy of the receipt, I took my original record and made a carbon copy, I did not attempt to issue an original. And made a carbon copy. I didn't attempt to issue original. It was just a copy to show what the original contained. This (indicating) is a copy of

[fol. 25] the original. I made the receipt from the office copy. The writing is all the same, but the print is different. The contract is the same though.

Cross-examination by Judge Moseley:

Mrs. Daniel never signed that receipt, and I did not ask her to sign it, and Mr. Fowler did not sign it for her.

Redirect examination by Mr. Adams:

I mean this receipt is different sized type. That copy is the same thing I gave Mrs. Daniel, and covers the same identical thing.

Mr. Adams: We offer that copy of the original express receipt.

The Court: I don't think that is admissible, he can refresh his memory from any memorandum that he made, and after refreshing his memory testify as to the contents.

Witness: Fifty dollars was all the valuation placed on that package. I made that memorandum. The receipt read, Comer, Ga., August 25th, One Package. Mr. Fowler brought it from Mrs. Daniel, and the valuation placed on it was fifty dollars, and that is all I can recall. The receipt was signed by me, I gave him the original.

Recross-examination by Judge Moseley:

Mrs. Daniel did not sign the receipt and she in no way entered into any contract with me, but the contract I made was with Mr. Fowler, just like I stated. We offer this copy of the express receipt in evidence as it is shown that the original was lost.

Objected to by plaintiffs counsel, because it is a copy.

The Court: Objection sustained. If the original is lost, I will allow its contents to be proven by parol.

Defense rests.

Mrs. J. S. Daniel, being recalled, testified as follows:

Direct examination by Judge Moseley:

In regard to placing a value on the package of $50.00, $75.00 or [fol. 26] a hundred dollars as stated by Mr. Fowler, I did not, if I had known how much I could have been allowed to place on that, as I stated before, I did not know how much the company would allow me to place on it, and I gave instructions to Mr. Fowler to tell Mr. Barnes to put a fair valuation on it. I told Mr. Fowler it was around $200.00 in value. When Mr. Fowler told me the amount that he had placed on the package I was very much — it got away with me, and said, why Mr. Fowler, that would not pay for one suit of

clothes, but I dismissed it from my mind, as I hoped it would not be lost.

Evidence in.

The Court: It is conceded under the evidence that this package was insured for $50.00.

Judge Moseley: That is a disputed point, that is the only point in it.

IN SUPERIOR COURT OF MADISON COUNTY

STIPULATION AND ORDER SETTLING BRIEF OF EVIDENCE—Filed March 9, 1922.

We agree that the foregoing nine pages, is a true and correct brief of the evidence adduced in the trial of the case of Geo. C. Daniel vs. American Railway Express Company, therein referred to. This 9th day of March, 1922.

Berry T. Moseley, Counsel for Plaintiff. Clarence E. Adams, Counsel for Defendant.

Approved. —— ——, Judge Superior Court, N. J. C.

[fol. 27] The foregoing nine pages, constituting the brief of evidence, in this case, and the four pages constituting the charge of the court, *is* hereby approved as a true and correct copy of the brief of the evidence and charge of the court, as produced upon the trial of the above stated case. Let the same be filed as part of the record herein.

This 9th day of March, 1922.

W. L. Hodges, J. S. C., Northern Circuit.

[File endorsement omitted.]

IN MADISON SUPERIOR COURT

[Title omitted]

CHARGE OF COURT—Filed March 9, 1922

GENTLEMEN OF THE JURY: George C. Daniel brings suit against the American Railway Express Company for damages in the sum of $152.50. The plaintiff alleges in his petition, that Mrs. J. S. Daniel delivered to the defendant company certain articles of merchandise, or personal property, which are fully set forth in the petition by exhibit, which is attached to the petition aggregating in

value the sum of $152.50. These goods were delivered to the defendant company for the purpose of being shipped from Comer, Georgia, to Baltimore, Maryland, and that they were lost or destroyed by the defendant company, and that on demand the defendant company refuses to deliver the goods or pay the value thereof, and therefore the plaintiff brings his suit for the purposes of recovering the value of these goods.

The defendant comes into court and denies it is liable as to the [fol. 28] amount of $152.50. They admit receiving the goods, and they admit they were lost or destroyed, and that they are liable under a receipt issued by the company tendered to the plaintiff wherein it is stipulated in case of loss or destruction of the goods shipped the company would be liable to the amount of $50 only. That is in substance the defendant's plea, is that correct, Mr. Adams?

The burden is on the plaintiff to establish his right to recover by the preponderance of the testimony. By preponderance of the testimony is meant that superior weight of testimony which while not enough to wholly free the mind of a reasonable doubt. Yet it is sufficient to incline the fair and impartial mind to one side of the issue rather than to the other. In determining on which side of the case the preponderance of the testimony lies, you can look to the witnesses testifying, their demeanor on the stand, their interest or want of interest in the result of the trial of the case, their opportunity of knowing what they testify about, their credibility or want of credibility so far as the same may legitimately appear from the trial of the case, together with all the attending circumstances proven on the trial of the case. You can also consider the number of witnesses, although it does not necessarily follow that the preponderance lies with the great number of witnesses.

As law applicable to this case, I give you in charge the following. The principal is bound by all the acts of his agent within the scope of his authority, if the agent exceeds his authority, the principal cannot ratify in part and repudiate in part, he must adopt either the whole or none. The agent's authority will be construed to include all necessary and usual means for effectually executing it. Private instructions or limitations not known to persons dealing with a general agent cannot effect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority.

[fol. 29] I charge you as a matter of law if Mrs. Daniel in making this shipment instructed the mail carrier to insure this property and put any special limitation as to the amount of insurance, or rather gave her agent special instructions in regard to the amount of insurance, that if the agent violated these instructions and the express company had no knowledge of these express limitations or instructions, then the express company should not suffer for the violation of such instructions, but the loss or injury, if any would fall upon the principal, who was Mrs. Daniel. On the other hand I charge you if Mrs. Daniel gave her agent the mail carrier special instructions in regard to the insurance of this property and the express company had knowledge of these limitations or restrictions, then it would be

bound, provided through violations of these restrictions loss should be sustained. The express company would be liable and should suffer the loss and not the shipper on account of the violation of the instruction. Whether or not Mrs. Daniel had an agent employed or solicited some one to represent her in the shipping of the articles is a question for you to determine, also what instructions were given him, what limitations were made, and whether or not the express company had any knowledge of these special instructions or restrictions are questions of fact for you to determine from the testimony in the case.

I charge you if you believe from the testimony in this case that the plaintiff through herself or a lawfully constituted agent entered into an agreement with the defendant company fixing the valuation of the property shipped, and which was a basis for fixing the charges or for any other consideration fixed a valuation on the property in question, then I charge you that the plaintiff in this case would be restricted or limited to the valuation fixed by such agreeemnt.

[fol. 30] On the other hand I charge you if there was no agreement entered into between the plaintiff by herself or through her legally constituted agent and the defendant express company, by which the value of the property in question was fixed, but the express company put an arbitrary limitation upon these goods by its employees, and damages arose from the loss of the goods in question, then and in that event the defendant in this case would be liable for the actual proven value of the goods in question regardless of any limitation of value that might be placed upon these goods by the defendant company alone in any receipt that it might have issued. Now whether or not any such agreement was entered into by both parties, that is, the plaintiff in this case, and the defendant, or whether or not there was an arbitrary value put upon this property by the defendant company and a receipt issued by it is a question of fact for you to determine from all the evidence in the case.

If under the rules of law given you in charge you believe from the testimony in this case that Mrs. Daniel through herself or agent entered into a contract as explained to you in my charge fixing the valuation of the property in question, then she could only recover the amount fixed by such contract. On the other hand if you do not believe any contract was entered into by Mrs. Daniel, or by herself or her agent and an arbitrary valuation was placed upon the goods in question by the defendant company alone, then the plaintiff would be entitled to recover whatever the proven value of the goods are.

I also charge you if there was no contract fixing the valuation or no receipt fixing the valuation, or no agreement of any kind or memorandum of any kind fixing the valuation, the plaintiff would be en-

[fol. 31] titled to recover the proven value of the property. If you find for the plaintiff let your verdict specify the amount. We the jury, find for the plaintiff so many dollars. If you find for the defendant, let your verdict specify. We, the jury find for the defendant. I will modify the forms of the verdict to some extent. In any event you should find $50, as the amount admitted in court by the defendant, but if you find a larger amount for the plaintiff, so specify

it. But in any event you should find to the amount of $50, that is the amount admitted by the express company to be due as their liability.

In Madison Superior Court

Verdict and Judgment

We the jury find for the plaintiff $100.00.

July 25, 1921.

C. P. Griffeth, Foreman.

Whereupon it is considered ordered and adjudged by the court that the plaintiff G. C. Daniel, do have and recover judgment against American Express Company the defendant the sum of $100.00 principal with interest on the same from this date at 7% per annum and the further sum of $— costs of suit.

Judgment signed this July 25th, 1921.

W. L. Hodges, Judge S. C., N. C. Berry T. Moseley, Atty. for Plaintiff.

In Madison Superior Court

[Title omitted]

Verdict and Judgment for Plaintiff at July Term, 1921, of Madison Superior Court, on 25 Day of July, 1921

Motion for New Trial

The defendant being dissatisfied with the verdict and judgment [fol. 32] in said case comes during said term of the court before the adjournment thereof, and within thirty days from said trial, and moves the Court for a new trial, upon the following grounds to wit:

First. Because the verdict is contrary to evidence and without evidence to support it.

Second. Because the verdict is decidedly and strongly against the weight of evidence.

Third. Because the verdict is contrary to law and the principles of justice and equity.

Whereupon, he prays that these his grounds for a new trial, be inquired of by the Court, and that a new trial be granted him.

Clarence E. Adams, Attorney for Movant.

IN MADISON SUPERIOR COURT

ORDER TO SHOW CAUSE

Read and considered. It is ordered that the American Ry. Ex. Co., show cause before me at Danielsville instanter at — o'clock on the 26 day of July, 1921, why the foregoing motion should not be granted. It is further ordered that the plaintiff be served with a copy of this motion and order, and that this order act as a supersedeas until the further order of the court.

This 26th day of July, 1921.

W. L. Hodges, Judge of Northern Judicial Circuit.

IN MADISON SUPERIOR COURT

ORDER SETTING CAUSE FOR HEARING OF MOTION FOR NEW TRIAL—Filed July 26, 1921

The defendant having made a motion for new trial in said case, on the grounds therein stated, and said grounds having been approved by the Court, and it appearing that it is impossible to make out and complete a brief of the testimony in said case before adjournment of Court, it is ordered by the Court that said motion be heard and determined on the 5th day of Sept. 1921 at Danielsville, and that movant may amend said motion at any time before the final hearing.

If, for any reason, said motion is not heard and determined at the [fol. 33] time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon and upon failure to agree, then at such time and place as the presiding Judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason, this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that the movant have until the hearing, whenever it may be, to prepare and present for approval a brief of evidence in said case, and the presiding Judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the Clerk's office before the date of the hearing said brief of evidence may be filed in the Clerk's office at any time within ten days after the motion is heard and determined.

This 26 day of July, 1921.

W. L. Hodges, Judge of Northern Circuit.

Due and legal service of the within motion and order acknowledged, time, copy and all other and further service waived.

This 26 day of July, 1921.

Berry T. Moseley, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 34] MADISION SUPERIOR COURT

[Title omitted]

AMENDED MOTION FOR NEW TRIAL—Filed March 9, 1922

And now comes the American Railway Express Company, the movant in the original motion for new trial heretofore filed, and on this, the 9th day of March, 1921, at the time and place set for the hearing thereof, and by leave of the Court first had and obtained, amends its said original motion by adding thereto the following grounds.

1

That the Court erred, as movant contends in charging the jury as follows:

The defendant comes into court and denies it is liable as to the amount of $152.50. They admit receiving the goods, and they admit they were lost or destroyed, and that they are liable under a receipt issued by the company tendered to the plaintiff. Because the undisputed evidence in this case is that there was not only a tender of the receipt to the plaintiff, but that the receipt in question which, under the law, became a binding contract between the plaintiff and the defendant was actually given to the plaintiff and accepted. The use of the word tendered in this connection was inaccurate and misleading, so movant contends, in that it in effect charged the jury that a tender, and not a delivery, had been made.

2

That the Court erred in charging the jury as follows:

Private instructions or limitations not known to persons dealing with a general agent cannot affect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority.

Because no question of agency, either general or special, should ever have been submitted to the jury. There was no question in [fol. 35] this case and no issue involved of special agency or of general agency. The facts were undisputed. That the shipper had constituted one Fowler, her agent, to ship these goods for her, and the law will imply authority under such circumstances to make a

valid and binding contract with the carrier, involving a limitation of the carrier's liability.

3

That the Court erred in charging the jury as follows:

I charge you as a matter of law if Mrs. Daniel in making this shipment instructed the mail carrier to insure this property and put any special limitation as to the amount of insurance, or rather gave her agent special instructions in regard to the amount of insurance, that if the agent violated these instructions and the express company had no knowledge of these express limitations or instructions, then the express company should not suffer for the violation of such instructions, but the loss or injury, if any, would fall upon the principal, who was Mrs. Daniel. On the other hand, I charge you if Mrs. Daniel gave her agent the mail carrier special instructions in regard to the insurance of this property and the express company had knowledge of these limitations or restrictions, then it would be bound, provided through violations of these restrictions loss should be sustained. The express company would be liable and should suffer the loss and not the shipper on account of the violation, of the instructions. Whether or not Mrs. Daniel had an agent employed or solicited someone to represent her in the shipping of the articles is a question for you to determine, also what instructions were given him, what limitations were made and whether or not the express company had any knowledge of these special instructions or restrictions are questions of fact for you to determine from the testimony in the case.

Because there was no issue in this case which ought to have [fol. 36] been submitted to the jury, or which could legally have been submitted to the jury respecting the agency of Fowler or any limitations upon his authority, the undisputed testimony being that the shipper had constituted Fowler as her agent to make this shipment for her.

And that he had implied authority to make a valid and binding contract with the carrier, (this defendant) involving a limitation of the carriers liability, and that the instructions given Fowler by the shipper were uncontradictedly private instructions which could not bind the defendant, no matter whether the agency were general or special, and further because there are no facts in this testimony which in any way tend to show that the American Railway Express Company had any notice of any limitation on Fowler's authority, nor are any facts proven which would put this defendant upon any inquiry to learn the limitations on his authority, but, on the contrary, the uncontradicted evidence is that he had full authority from the shipper to make a contract for the shipment of these goods in her behalf.

That the Court erred in charging the jury as follows:

I charge you if you believe from the testimony in this case that the plaintiff through herself or a lawfully consituted agent entered

into an agreement with the defendant company fixing the valuation of the property shipped, and which was a basis for fixing the charges or for any other consideration fixed a valuation on the property in question then I charge you that the plaintiff in this case would be restricted or limited to the valuation fixed by such agreement.

Because there was no issue to be submitted to the jury in this connection, in that the undisputed testimony in the case was that the plaintiff had, through her lawfully constituted agent, entered [fol. 37] into an agreement with the defendant company, fixing the valuation of the property shipped, which was the basis for fixing the charges, and no issue being submitted on this point, the court should not have referred the question to a jury.

5

That the Court erred in charging the jury as follows.

"On the other hand I charge you if there was no agreement entered into between the plaintiff by herself or through her legally constituted agent and the defendant express company by which the value of the property in question was fixed, but the express company put an arbitrary limitation upon these goods by its employees, and damages arose from the loss of the goods in question, then and in that event the defendant in this case would be liable for the actual proven value of the goods in question regardless of any limitation of value that might be placed upon these goods by the defendant company along in any receipt that it might have issued. Now whether or not any such agreement was entered into by both parties, that is, the plaintiff in this case and the defendant, or whether or not there was any arbitrary value put upon this property by the defendant company and a receipt issued by it is a question of fact for you to determine from all the evidence in the case.

If under the rules of law given you in charge you believe from the testimony in this case that Mrs. Daniel through herself or agent entered into a contract, as explained to you in my charge, fixing the valuation of the property in question, then she could only recover the amount fixed by such contract. On the other hand, if you do not believe any contract was entered into by Mrs. Daniel or by herself or her agent, and an arbitrary valuation was placed upon the goods in question by the defendant company alone then the plaintiff would be entitled to recover whatever the proven value of the goods are.

[fol. 38] Because the shipment in this case is an interstate shipment, as shown by the uncontradicted evidence. That the rights and liabilities of parties to an interstate shipment are controlled by the Federal laws, the decisions of the Federal courts construing those laws and the common law, and the bill-of-lading, or in this case the express receipt and that when by the uncontradicted evidence it was shown that the defendant had delivered to the shipper's agent duly constituted, an express receipt wherein the value was stated in

writing to be Fifty ($50) Dollars, and this express receipt had been accepted by the shipper's agent, the express receipt became a binding and valid contract between the parties in this case, and the charge of the court with reference to arbitrary fixing of value, was improper and erroneous, because the question of whether the value was fixed arbitrary or not was not involved in this case, under the uncontradicted testimony.

6

The court erred in charging the jury as follows:

"I also charge you if there was no contract fixing the valuation or no receipt fixing the valuation, or no agreement of any kind or memorandum of any kind fixing the valuation, the plaintiff would be entitled to recover the proven value of the property.

Because the uncontradicted evidence in this case is that there was a contract in which the plaintiff, through her lawfully constituted representative and agent, fixed the valuation of the property and obtained the lower of two rates.

7

That the Court erred, so movant contends in permitting the witness, Mrs. J. S. Daniel, over objection, to testify as to what authority she gave her agent, Fowler, as to placing a valuation upon the package to be transported, for that no testimony was introduced [fol. 39] showing any notice to the defendant express company of any limitations privately given Fowler on his authority to act.

8

That the Court erred in refusing to admit in evidence properly certified copies of the tariffs and classifications of file with the Interstate Commence Commission, because this shipment was an interstate shipment, and the filed tariffs and classifications, by which the defendant proposed to show that the shipment in question was one as to which the Interstate Commerce Commission had authorized the defendant as a carrier of express, to maintain alternate rates dependent upon the value expressed in writing, so as to bring itself within the Federal Statute known as the Second Cummins Amendment, which was the controlling law governing the rights and liabilities of the parties to this shipment, should have been admitted in evidence, and because said tariffs and classifications, when properly certified as they were in this case, would show that the shipper had in fact the choice of alternate rates, dependent upon the value of the shipment, as declared in writing by the shipper, and that this evidence was material and relevant, and that it was highly prejudicial to the rights of this defendant to exclude such evidence.

Wherefore, movant prays that these, its grounds of motion for a new trial, be considered by the Court, and that a new trial be granted upon each and all of the grounds.

Robert C. Alston, Clarence E. Adams, Attorneys for Movant.

IN MADISON SUPERIOR COURT

ORDER ALLOWING FILING—Filed March 9, 1922

At Danielsville, Ga., the 9th day of March, 1922, the above and foregoing amended motion allowed and the grounds thereof are approved, and it is ordered that the same be filed.

W. L. Hodges, Judge Superior Court.

[File endorsement omitted.]

[fol. 40] IN MADISON SUPERIOR COURT

ORDER OVERRULING MOTION FOR NEW TRIAL—April 4, 1922

The within and foregoing motion for new trial came on to be heard at the regular March Term, 1922, of Madison Superior Court in pursuance of proper orders heretofore granted.

After giving said motion mature consideration, it is ordered that the same be and is hereby overruled and a new trial refused.

The decision of the court was reserved in this case until this date by agreement of counsel for parties.

W. L. Hodges, Judge Superior Court, Northern Circuit.

SUPERIOR COURT OF MADISON COUNTY

CLERK'S CERTIFICATE—May 5th, 1922

I hereby certify that the foregoing pages, hereto attached, contain a true transcript of such parts of the record as are specified in the bill of exceptions and required by the order of the Presiding Judge, to be sent to the Court of Appeals in the case of American Ry. Exp. Company, Plaintiff in error, vs. Geo. C. Daniel, Defendant in error. I further certify that the July 1921 Term of said Court at which said case was tried, adjourned July 28th, 1921, All of which appears from the Records and Minutes of said Court.

Witness my signature and the seal of said Court, affixed the day and year first above written.

Wm. D. Meadow, Clerk Superior Court, Madison Co., Ga.

[fol. 41] [File endorsement omitted.]

[fol. 42] COURT OF APPEALS OF GEORGIA

[Title omitted]

OPINION

By the COURT:

1. Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the second Cummins amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties a recital in the receipt of a certain valuation of the property even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agreement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation.

2. A certain contract instruction by the court to the jury of a rule of law not applicable to the issue being tried, where harmless when the true rule applicable is elsewhere properly given in charge to the jury, is not ground for reversal.

STEPHENS, J.: 1. This is a suit by a shipper against a carrier to recover the actual value of goods lost in an interstate shipment through the alleged negligence of the carrier, where the carrier in its plea admits that the property was received for transportation and was lost through its negligence, but defends solely upon the ground that its liability was limited to a valuation of $50, which it contends was agreed upon in the contract of shipment. A verdict for $100 was rendered for the plaintiff, which was for an amount authorized by the evidence as representing the true value of the prop- [fol. 43] erty lost. The carrier excepts upon the ground that, under the law and the evidence, it is not liable in an amount in excess of the alleged agreed valuation of $50.

While a carrier can not by a contract with a shipper exempt itself from liability for its own negligence or that of its servants in case of loss or damage to the article shipped, a carrier in interstate commerce may, by an agreement with the shipper, fairly and understandingly made, where the shipper is given a consideration in the choice of a lower rate based upon a declared or agreed value of the article shipped, limit its liability to the value agreed upon. Adams Express Co. v. Croninger, 226 U. S. 491; Union Pac. R. R. Co. v. Burke, 255 U. S. 317, 321; see also in this connection: American Ry. Express Co. v. Bailey, Ga. (113 S. E. 551); Pierce Co. v. Wells Fargo & Co., 230 U. S. 278; Mo. Kan. & Tex. R. Co. v. Harriman, 227 U. S. 657; Wells Fargo & Co. v. Neinan-Marcus Co., 227 U. S. 469. This is the settled Federal law as laid down in Adams Express Co. v. Croninger,

supra, and cases following it. This rule is in no wise changed by the provisions of the second Cummins amendment, of August 9, 1916. This amendment provides that the carrier shall not be relieved of liability for the full amount of the actual loss or damage sustained, notwithstanding any agreement made limiting its liability to a declared or agreed value placed upon the article shipped, unless the carrier is authorized by the interstate-commerce commission to establish and maintain rates "dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." According to this provision this declared or agreed value, before it can operate to limit the amount of the carrier's liability, must be in writing, and it must also be declared and agreed [fol. 44] upon as the released value of the property, knowingly and understandingly and for the purpose of securing the lower rate. A value arbitrarily placed by the carrier upon the property presented for transportation, even though the reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage.

In the case before us it does not appear that the shipper made any declaration as to the value of the article shipped. Nor does it appear that the $50 valuation placed upon the shipment by the agent of the defendant carrier, which was less than the true value, even though acquiesced in by the agent of the shipper, was, if agreed upon, agreed upon as a reduced value knowingly and understandingly and for the purpose of securing the benefit of the reduced rate. In fact it does not appear that the shipper's agent who delivered the package to the carrier had any information whatsoever that the carrier was authorized to charge a reduced rate based upon a reduced valuation. It furthermore appears that the agent of the shipper was ignorant of the value of the contents of the package presented for transportation, and the agent of the carrier receiving the package was aware of this ignorance, and upon the professed inability of the agent for the shipper declare the value of the articles presented for transportation, the carrier's agent suggested the value of $50, which was placed upon the property shipped and a rate made accordingly.

The contention of counsel for the plaintiff in error, that under the authority of American Ry. Ex. Co. v. Lindenburg, decided Jan. 8, [fol. 45] 1923, — U. S., —, the acceptance of a receipt for the property presented for transportation given by the carrier to the shipper in this case established a contract limiting the carrier's liability to $50, the valuation actually placed upon the property, is unavailable to the plaintiff in error, since the receipt is not in evidence, and the parol evidence as to its contents does not show that the receipt contained any agreement between the carrier and the shipper whereby the shipper agreed to a reduced value for the purpose of securing a reduced rate. Evidence to the effect that the $50 valuation placed upon the contents of the shipment was recited in the receipt does not,

without more, establish that the receipt contained an agreement whereby the shipper consented to the $50 valuation for the purpose of securing the reduced rate charged.

2. Where the court instructed the jury favorably to the defendant carrier, that one who is entrusted with property by the owner for the purpose of delivering it to a carrier for transportation presumably has authority to agree with the carrier upon the terms of shipment, and that, in the absence of any knowledge by the carrier that such agent is exceeding his authority and is violating his instructions from his principal when entering into an agreement with the carrier as to the value of the property, the owner of the property is bound by such agreement, an instruction to the jury to the effect that persons dealing with a special agent for a particular purpose should examine such special agent's authority was, if error, harmless.

3. Under the above rulings, no reversible error appears.

Judgment affirmed. Jenkins, P. J., and Bell, J., concur.

[fol. 46] COURT OF APPEALS OF GEORGIA

JUDGMENT—February 27, 1923

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

This case came before this court upon a writ of error from the superior court of Madison county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Jenkins, Stephens and Bell, JJ., concur.

[fol. 47] COURT OF APPEALS OF GEORGIA

[Title omitted]

MOTION FOR REHEARING—Filed February 28, 1923

Comes now the American Railway Express Company, Plaintiff in Error, and before the remittitur in this case has been transmitted to the Clerk of the trial court, and during the term at which the judgment sought to be reviewed was rendered, makes and files this,

its motion for a rehearing and shows to the Court the following facts as constituting its grounds therefor:

1

The shipment in this case is an interstate shipment and as such is governed exclusively by the Federal law. This fact was pointed out to the Court in the brief of the plaintiff in error and somewhat emphasized. It may not be harmful to repeat it now and to call the Court's attention not only to the cases cited on the original brief, but to the cases of American Railway Express Company vs. Roberts, 28 Ga. App., 510; Central of Georgia vs. Yesbik, 146 Ga., 769; Southern Railway vs. Morris, 147 Ga., 729. This doctrine is well settled and is probably recognized by this Court in the decision in the instant case. What was apparently not considered and given weight by the Court, was that the State rule as to limitation of liability by the carrier in its shipping receipt is a different rule and based upon different principles than is the Federal rule.

2

The decision in the case at bar is rested upon the case of American Railway Express Company vs. Bailey, 113 S. E. 551. We desire to point out to the Court here that that shipment was an intrastate ship-[fol. 48] ment in Georgia and for that reason the measure of liability and the rights of the parties were governed by the Georgia law and not by the Federal law. As we endeavored to point out in the original brief, the United States Supreme Court, as early as the Croninger case, 226 U. S., 491, has adhered in an unbroken line of authorities to what may be termed the Estoppel Doctrine. Briefly stated this doctrine is:

"Where at the time of shipment a statement or declaration in writing by the shipper is made of the value of the shipment upon which the carrier fixes a rate, where the carrier maintains alternate rates dependent upon the values declared, the shipper is estopped, in case of loss, to recover more than the value stated to which the lower alternate rate was applied."

The above is quoted from our original brief and referred to therein as "proposition B." As authorities for this propositin we cited the Second Cummins Amendment and a long list of cases. We do not now repeat those citations, but respectfully refer the Court to our original brief. We do, however, pick out from that list, the case of George N. Pierce, vs. Wells-Fargo Company, 236 U. S., 278, and Wells-Fargo Company vs. Neiman-Marcus, 227 U. S. 469, as illustrating the Federal rule that recovery is limited to an amount to which the lower alternate rate was applied and that the prohibition against the shipper's recovery of the full value rests upon the Doctrine of Estoppel.

We now draw the Court's attention to a decision handed down at the October term, 1922, of the United States Supreme Court.

The case referred to is that of American Railway Express Co. vs. Lindenburg, 43 Supreme Court Reporter, page 206.

[fol. 49] In that case the United States Supreme Court reiterated what it had previously said in all the cases that have ever preceded it in which was drawn in question the right of the carrier to limit its liability to an amount referable to the rate applied. In the Lindenburg case a shipment of two trunks weighing 100 pounds respectively, and a package weighing 10 pounds were shipped from Charleston, West Virginia to Indianapolis, Indiana. This was in July, 1918. A receipt was given by the American Railway Express Company, which provided:

"— shall this company be held liable or responsible, nor shall any demand be made upon it beyond the sum of fifty dollars upon any shipment of 100 pounds or less, and for not exceeding 50 cents per pound upon any shipment weighing more than 100 pounds, and the liability of the express company is limited to the value above stated unless the just and true value is declared at time of shipment, and the declared value in excess of the value above specified is paid for, or agreed to be paid for, under this company's schedule of charges for excess value."

At the time of the shipment, the value of the property was neither stated by the respondent nor demanded by the shipper. The charges, however, were on the basis of the limited liability set forth in the receipt. One of the trunks when delivered at destination was in bar order. Some of the goods therein were damaged and others destroyed. The plaintiff claimed that these goods were worth $1,500.00 and sued for that sum. The American Railway Express Company, the defendant, answered and admitted a liability of $110.00 under the terms of the receipt. The West Virginia Supreme Court gave judgment for the value of the property, irrespective of the limited liability and the case was carried to the United States Supreme Court by writ of certiorari. In the fifth head note the Court held that:

"A shipper, who takes advantage of the lower rate offered by a [fol. 50] carrier for a shipment of limited valuation, is estopped, after the loss or damage of the goods, to assert that they were of greater value."

Elaborating on this head note, the Court holds (page 209):

"Having accepted the benefit of the lower rate dependent upon the specified valuation, the respondent is estopped from asserting a higher value. To allow him to do so would be to violate the plainest principles of fair dealing."

The Croninger case and the Hart case (112 U. S. 331) are then cited and the court takes occasion to cite from the case of Kansas City Southern R. Co. vs. Carl, 227 U. S. 639.

The Supreme Court rested this case upon the principles just stated and reversed the West Virginia Supreme Court.

We think that this Court will find the Lindenburg case to be on all fours with the case at bar.

Before leaving this subject, however, permit us to refer again to the pierce case (236 U. S. 278) in which the automobiles lost were of the value of thousands of dollars and recovery was limited to $50.00. The doctrine of estoppel upon which this case and other cases cited rests, is not based upon an arbitrary valuation of a bona fide valuation. That this is true is shown conclusively in the Pierce case and in order to bring clearly to this Court the ruling made, we quote a head note of the piece case, where Mr. Justice Day, speaking for the court, said:

"The legality of a contract limiting the carrier's liability to a specified or agreed valuation does not depend upon that valuation having a relation to the value of the shipment, but depends upon acceptance of the parties to the contract and upon the filed tariff and the requirement of the shipper to take notice thereof and to be bound thereby."

[fol. 51]

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That there is then a distinction between the State rule and the Federal rule is shown in the Bailey case, upon which this Court's decision is made to rest and which gives the State rule very clearly. That rule is that where the shipper and the carrier have made a bona fide contract by which the value of the property is fixed, the shipper is bound by the contract and all of the terms thereof and it is for a jury to say in each case whether there has or whether there has not been a bona fide attempt to fix the value, or whether the value inserted in the contract is merely an arbitrary valuation. The United States rule, as we have undertaken to show, differs greatly from this rule as the Pierce case, supra, makes exceedingly clear.

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Plaintiff in Error points out to the Court that there has never been any conflict in the Federal decisions on this point; that the leading case of Croninger vs. the Express Company, supra, first announced the policy of the Federal law and that it has been adhered to without a break from that decision through the Lindenburg case, and your movant prays now a reconsideration of the decision handed down this day by this honorable Court and suggests to the Court that the Lindenburg case and the other Federal cases referred to govern the rights and the liabilities of the parties and that the Federal rule is different from the State rule and is different from the rule announced in the case at bar in the opinion handed down.

And movant alleges and points out expressly the decision of the United States Supreme Court of American Railway Express Company vs. Lindenburg, 43 Supreme Court Reporter, 206, as a case which is controlling in the instant case and which was overlooked in the decision thereof and movant expressly points out as other [fol. 52] controlling cases overlooked by the Court in the rendition of this decision the cases of:

Cleveland, C., C. & St. L. R. Co. v. Detlebach, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 177;
George N. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278, 59 L. Ed. 586, 35 Sup. Ct. 351;
Atchison, T. & S. F. R. Co. . Robinson, 233 U. S. 173, 58 L. Ed. 901, 34 Sup. Ct. 556;
Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, 34 Sup. Ct. 526, L. R. 1915 B, 450, Ann. Cas. 1915 D 593;
Great Northern R. Co. v. O'Conner, 232 U. S. 508, 58 L. Ed. 703, 34 Sup. Ct. 380, 8 N. C. C. A. 53;
Chicago R. I. & P. R. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. 383;
Barrett v. City of New York, 232 U. S. 14, 58 L. Ed. 483, 34 Sup. Ct. 203;
Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. 397;
Chicago, St. P. M. & O. R. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155;
Adams Exp. Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct. 148, 44 L. R. A. (N. S.) 257;
Wells-Fargot & Co. v. Neiman-Marcus, 227 U. S. 469;

And, therefore, petitioner prays consideration of this, its motion for a rehearing and that the same be granted.

Alston, Alston, Foster & Moise, Attorneys for Movant.

[fol. 53] COURT OF APPEALS OF GEORGIA

[Title omitted]

AFFIDAVIT OF BLAIR FOSTER—Filed February 28, 1923

I, Blair Foster, of counsel for the movant in the above and foregoing motion for a rehearing, certify that upon careful examination of the opinion of the Court, I believe that a decision, to-wit, the decision of the United States Supreme Court in the case of the American Railway Express Company vs. Lindenburg, 43 Supreme Court Reporter, 206, and the further cases of:

Cleveland, C. C. & St. L. R. Co. v. Dettlebach, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 177;

George N. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278, 59 L. Ed. 586, 35 Sup. Ct. 351;
Atchison, T. & S. F. R. Co. v. Robinson, 233 U. S. 173, 58 L. Ed. 901, 34 Sup. Ct. 556;
Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, — Sup. Ct. 526, L. R. 1915 B 450, Ann. Cas. 1915 D 593;
Great Northern R. Co. v. O'Conner, 232 U. S. 508, 58 L. Ed. 703, 34 Sup. Ct. 380, 8 N. C. C. A. 53;
Chicago R. I. & P. R. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. 383;
Barrett v. City of New York, 232 U. S. 14, 58 L. Ed. 483, 34 Sup. Ct. 203;
Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. 397;
Chicago, St. P. M. & O. R. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155;
Adams Express Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct., 148, 44 L. R. A. (N. S.) 257;
[fol. 54] Wells-Fargo & Co. v. Neiman-Marcus, 227 U. S. 469;

were overlooked by the Georgia Court of Appeals in the decision rendered in the case now at bar and stated above.

This 28th day of February, 1923.

Blair Foster.

[File endorsement omitted.]

[fol. 55] COURT OF APPEALS OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—March 2, 1923

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 56] COURT OF APPEALS OF GEORGIA

CLERK'S CERTIFICATE—March 20, 1923

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the entire record in the case therein stated, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

Logan Bleckley, Clerk. (Seal.)

[fol. 57] [File endorsement omitted.]

[fol. 58] SUPREME COURT OF GEORGIA

3684

ORDER GRANTING WRIT OF CERTIORARI—April 4, 1923

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the certiorari be granted and that this order operate as the writ. The case is assigned to the trial calendar for May 21, 1923, for hearing upon the record now of file.

[fol. 59] SUPREME COURT OF GEORGIA

3684

JUDGMENT—March 1, 1924

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

This case came before this court by writ of certiorari from the Court of Appeals of Georgia; and, after argument had, the same being for decision by a full bench of six Justices who are evenly divided in opinion, Beck, P. J., and Atkinson and Hill, JJ., being of the opinion that the judgment of the Court of Appeals should be affirmed, and Russell, C. J., Gilbert and Hines, JJ., being of the opinion that the judgment of the Court of Appeals should be reversed,

the judgment of the Court of Appeals stands affirmed by operation of law.

[fol. 60] SUPREME COURT OF GEORGIA

[Title omitted]

PER CURIAM OPINION

By the COURT: This case coming on for decision by a full bench of six Justices, on certiorari from the Court of Appeals, and Beck, P. J., and Atkinson and Hill, JJ., being of the opinion that the judgment of the Court of Appeals should be affirmed, and Russell, C. J., and Gilbert and Hines, JJ., being of the opinion that the judgment of the Court of Appeals should be reversed, the judgment of the Court of Appeals stands affirmed by operation of law.

[fol. 61] SUPREME COURT OF GEORGIA

CLERK'S CERTIFICATE—April 1, 1924

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the entire record of file in this office in Case No. 3684, American Ry. Express Co., plaintiff in error, v. G. C. Daniel, defendant in error, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

Z. D. Harrison, Clerk Supreme Court of Georgia. (Seal.)

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 991

AMERICAN RAILWAY EXPRESS COMPANY, Petitioner,

vs.

GEORGE C. DANIEL

On Petition for Writ of Certiorari to the Supreme Court of the State of Georgia

ORDER ALLOWING WRIT OF CERTIORARI—Filed May 12, 1924

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Georgia, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.